IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

(Court's order whether the case is or not approved for reporting.)

(Chapter VIII Rule 32 (2)(b)

Description of the Case

Criminal Appeal No. 21 of 2001 . decided on 16-07-2003

Deewan Singh Vs State of Uttaranchal

Approved for reporting

~~Not approved for reporting~~

Date of decision 16.7.2003 Initial of Judge

Note- Bench Reader will attach this at the top of the first page of the judgment when it is put up before the Judge for signature.

Court No. 2

Reserved

Criminal Appeal No. 21 of 2001

Deewan Singh S/o Daleep Singh- …..Appellant

Versus

State of Uttaranchal- …..Respondent.

Hon'ble P.C. Verma A.C. J.

Honb'ble Irshad Hussain J.

(Delivered by Hon'ble Irshad Hussain J.)

Appellant Deewan Singh has been convicted and sentenced to undergo imprisonment for life U/s 302 IPC per judgment and order dated 01.02.2001 passed in Sessions Trial No. 47 of 1999 by Sessions Judge, Pithoragarh for having committed murder of his daughter-in-law Smt. Ganga by causing her death by firing shot from his gun at about 1:30 p.m. on 09.07.1999 in his house situate within the vicinity of police station Jhoola Ghat, District Pithoragarh.

Factual matrix of the case is brief. On 09.07.1999 the information of the death of the victim was carried to Hoshiyar Singh (P.W.1), Village Pradhan who filed written report at the police station the same day at 8:45 p.m. The case U/s 302 IPC was registered and investigation was taken up by S.H.O. Lokesh Sharma (P.W.6) who held inquest on the dead-body, completed relevant formalities of the investigation, made search of the appellant named as the assailant in the F.I.R. but could not succeed till 30.07.1999 when his arrest could be effect and on his instance his licenced gun, Ext-1, having empty cartridge in the barrel was recovered vide memo, Ext. Ka-15 and on completion of the investigation chargesheet, Ext. Ka-17, was submitted against him on 24.08.1999.

According to the prosecution, husband of the deceased was employed in Delhi and the deceased was looking after the three children while residing with her in-laws in the village-Shakun, P.S. maintenance allowance for herself and her children and prior to the occurrence she had filed a petition U/s 125 of the Code of Criminal

Procedure. She was also maltreated by the appellant who even had evil-eye on her and exhibited immoral advances against her chastity. The resistance by the deceased had displeased the appellant who was entertaining grudge against her.

Appellant in his statement U/s 313 of the Code of Criminal Procedure while denying the allegation of commissions the murder and also refuting the imputations made against his conduct towards the deceased put forward a specific defence. He stated that his residential house is situated in a dense forest also inhabited by wild animals. To ward of the animals he always kept his lincenced gun loaded. On the day of occurrence at about 1:30p.m. he took his gun on the stairs of the house to have it cleaned. The children of the deceased were playing in the house at that time. Appellant went to bring pull-through and cleaning-oil and told the deceased to take care of the weapon. However, one of the child started fondling the gun and the deceased went there off causing injury of the fire-arm to the deceased. She fell there dead on the stairs. The appellant gave out that after this incident he summoned the Village Pradhan and sent information to the police about the accidental death. The police came there next day and held inquest on the dead-body but he was arrested by the police on 29th July,1999 when he was going to surrender himself in the Court. He also stated that Ram Chandra is the stock witness of the police. He also stated that his grand-son Sonu was studying in village Shakun itself.

There is no eye-witness of the crime and the prosecution, in order to prove the circumstances establishing the guilt of the appellant, examined six witnesses. P.W.1 Hoshiyar Singh, the village Pradhan received information that murder of Smt. Ganga Devi deceased had been committed, prepared the written report,Ext. Ka-1, and filed it at police station. P.W.2, Dr. M.M. Tewari performed postmortem on the dead-body of Smt. Ganga Devi at 4:45p.m. on 10.07.1999 and prepared postmortem report. P.W.3, Smt. Jayanti Devi, the mother-in-law of the deceased gave evidence to the effect

That while she was away in the jungle death of her daughter-in-law was caused by fire-arm injury and at that time her husband, the appellant, was also in the house besides the grand-children. P.W.4 Chandan Singh is the father of the deceased. He gave evidence that appellant was keeping an evil-eye on his daughter and also used to harass her besides giving her threat of death and further that his daughter was not provided maintenance while her husband was away in Delhi. The deceased had filed a maintenance petition and also made a complaint against the appellant, which is Ext. Ka-4 on the record. P.W.5 Ram Chandra is the witness of the recovery of gun, Ext. -1, on the pointing of the appellant on 30.07.1000 from the jungle of Kali-Adiyar. P.W.6, S.H.O. Lokesh Sharma is the Investigating Officer of the case. He proved relevant formalities of the investigation and also factum of arrest of the appellant on 30.07.1999 and recovery of gun at the instance of the appellant vide memo, Ext. Ka-5. He also proved documents of inquest, site-plan, charge-sheet etc.

Medical Officer, has detected following ante-mortem injuries on the person of Smt. Ganga Devi deceased:-

1. 4x 4 cms. Deep punctured lacerated wound circular, margin ragged over left side of chest along mid exillary, lying 12cm. below left exilla, skin charred with tattooing.
2. Three exit punctured wound over back of chest left side just below left scapula. Size 0.5x 0.5 x 0.5cms. and 1X 1cm. clotted blood present.
3. Punctured wound 4 in numbers of varying size 0.4x0.4cm., 0.3x0.3cm. 0.2x0.2cm. and 0.2x0.2cm. over right side of chest medial to right nipple.
4. Bleeding wound 1cm.x1cm. at the base of nose and contusion 2.5cm. long near the said injury.
5. Abrasion and contusion over right knee-cap, size 4x4cms.
6. Multiple abrasion and contusion over left knee-cap medially in an area of 3x2cm.
7. Abrasions on right and left thigh over medial and inner aspect, each 2x2cms.

On internal examination ribs were found fractured, pleura larynx, lungs, Heart and blood vessels were found lacerated. Pericardium was ruptured. Two pellets and one paper piece were recovered form the heart. Injury No. 1,2 and 3 were caused by fire-arm whereas other injuries were sustained by fall. Medical Officer also opined that the injures were sustained at about 1:30p.m. on 09.07.1999 and the gun shot injuries were sufficient in the ordinary course of nature to cause death of the deceased.

Prosecution also filed report of the expert, which is not very material in view of the defence version. Ext. Ka-3, is the certified copy of the petition U/s 125 of the Code of Criminal Procedure filed by the deceased on 10.05.1999 before the Judicial Magistrate, Pithoragarh.

In defence Ext. Kha-1 certificate dated 11.01.2001 of Principal of Primary School, Shakun that Manoj Kumar, son of the deceased, got admission in class-1st on 02.09.1998 was filed.

Learned Sessions Judge has on the basis of his appreciation of the material on record and the circumstantial evidence, drawn the inference that the appellant had committed the murder of Smt. Ganga Devi deceased and accordingly convicted and sentenced him as stated above.

Heard Sei Rajendra Dobhal learned Counsel for the appellant and learned A.G.A. and have perused and carefully considered the material on record.

As stated above there is no eye-witness of the crime and the case of the prosecution rests squarely on circumstantial evidence. It may be pointed at the outset that it is well settled that where a case rests on circumstantial evidence, the inference of guilt can be justified only when all the incriminating facts and circumstances are found to be incompatible with the innocence of the accused or the guilt of any other person. In considering the validity of the conviction of the appellant, therefore, we have to apply this test before relying on circumstantial evidence. The circumstances are:-

1. The deceased was lastly alive in the company of the appellant.

2. The deceased was subjected to ill-treatment by the appellant in the absence of her husband who was serving in Delhi and she had resisted the appellant's immoral advances and bad-intention against her chastity and also criminal intent against her life.
3. The appellant was absconding soon after the murder and he concealed his gun the weapon of assault which was recovered after 21 days on 30.07.1999 at his instance when he was arrested.
4. The defence taken by the appellant was palpably false.

In regard to the first circumstance there is no dispute that Smt. Ganga Devi deceased was lastly alive in the company of her father-in-law, appellant Deewan Singh in the residential house and that no other person besides them and the children were there inside the house when the incident took place. As is stated the circumstance of last seen together does not by itself lead to any definite inference that it was the appellant who committed the crime. Something more establishing connectivity between the appellant and the crime is the requirement and the requirement may very well be satisfied if the other circumstances are found to exist by admitted facts and inference drawn from the proved facts.

This takes us to the second above-mentioned circumstances and in relation to which there is evidence of Chandan Singh (P.W.4), the father of the deceased and the documentary evidence also on record. Te evidence of this witness is categoric on the point that his on-in-law was serving in Delhi and no maintenance was provided to his daughter and grand-children and further that the appellant wanted to maintain illicit relations with his daughter, the victim of the case. It is also in his evidence that he appellant used to otherwise also harass and ill-treat the deceased and even gave threats to kill her. Drawing attention to the cross-examination of the witness learned counsel for the appellant submitted that the evidence of the witness being hear-say, can't be taken to prove that appellant was having bad-eye on the deceased and his conduct towards her was indecent. The witness gave evidence on the basis of what was

disclosed by the deceased to the parents as independent evidence in this regard could hardly be available for the reason that the daughter would make a complaint of such a conduct of her father-in-law to her parents and not to any stranger. Therefore, the evidence of the witness can not out rightly be discarded by treating the evidence as hear-say because the evidence to this effect find corroboration from the documentary evidence also which, in turn, amply substantiate the circumstance under consideration against the appellant.

Ext. Ka-3, is the certified copy of the petition U/s 125 Cr.P.C. which was preferred by the deceased on 10.05.1999. It contains fair averment of the ill-treatment and also specific allegation in paragraph No. 3, that the appellant make immoral advances which are unbearable to the applicant (the deceased). The petition was moved about tow months before the incident and, therefore, the credibility of the evidence could not be questioned on the ground that the imputations made against the appellant were an after thought and concocted. Further, it is of significance that the deceased had submitted an application to the Superintendent of Police, Pithoragarh on 22.06.1999 complaining about the ill treatment meted out to her and also the appellant's evil-intentions to have illicit relations with her threats given by the appellant to kill her. P.W.4 had proved signatures of Smt. Ganga Devi deceased on this application, Ext. Ka-4, which was brought on record with documents of prosecution. Learned defence counsel argued that this was a fabricated piece of evidence and no legal sanctity could have been attached to it. We find no justification to ignore the import of this piece of evidence as it was received by the Superintendent of Police on 22.06.1999 who made an endorsement inviting report on the matter from the S.H.O. concerned. The endorsement was made on 22.06.1999 and we are not inclined to accept the submission that the senior police officer of the rank of Superintendent of Police might have ante dated the endorsement on the application to show that the document is genuine. Considering the consistent stand in this regard and the above evidence on record, we are of the firm view that the circumstance under discussion also stand

established. In other words, the deceased had been resisting the ill-treatment and also immoral advances and bad-intention against her chastity to the great displeasure of the appellant who then gave threats to kill the deceased on this account.

The incident in question took place on 09.07.1999 and soon after the appellant fled-away from his house and he could be arrested after 21 days on 30.09.1999. On his arrest, his gun Ext. -1 was recovered at his instance by the Investigating Officer and memo, Ext. Ka-5 was prepared. As stated above, appellant denied allegation of absconding but the circumstances borne out of the material on record support the prosecution claim. F.I.R., Ext.Ka-1, of the case was lodged by an independent witness Hoshiyar Singh (P.W.1) who is the Pradhan of the village. In the F.I.R. the role of the assailant was assigned to the appellant and it was also mentioned that the appellant had fled away from the house with his gun after the incident. The recital of the F.I.R. to this effect was not disputed as is evident from the cross-examination of the witness. The witness was not given any suggestion to dispute the claim about the absconding of the appellant and there is nothing to indicate that false recital was made in the FIR by this witness. Further, Smt. Jayanti Devi (P.W.3) wife of the appellant in her evidence has also not supported the claim of the appellant. She made a specific statement that the information of the death of the deceased was given by her to the villagers and later on police had visited her house. This is contrary to the claim of the appellant that after the incident he had summoned the Village Pradhan and sent him to report the matter to the police. Moreover, the wife of the appellant made no statement that her husband continued to remain in house after the incident. No suggestion was also given to her about the presence of the appellant in the village after the incident and in the face of the oral evidence on record, we are not inclined to accept the argument that the evidence is not sufficient to prove that the appellant was absconding soon after the incident.

This aspect of the matter may also be considered by another angle. Evidence of Investigating Officer (P.W.6) as well as

the inquest report, Ext. Ka-8 reveal that the appellant was not at the scene of the occurrence and instead among others appellant's brother Jeet Singh Rawat and his wife Smt. Radhika Rawat were nominated as the 'Panch witnesses' and that after the postmortem, the dead body of the deceased was received by the brothers of the appellant and was cremated. Investigating Officer vehemently denied to the suggestion that the appellant participated in the cremation of the deceased. There is nothing to assail the evidence of the Investigating Officer and the material on record which prove that the appellant had absconded soon after the incident. If the incident was to take place in the manner as stated to by the appellant, he would have normally been nominated one of the 'Panch Witness' and would have actively involved in the cremation of the deceased.

The evidence of Investigating Officer as well as witness Ram Chandra (P.W.5) proved that appellant was arrested on 30.07.1999 at 8:05 a.m. from near Jholkhet and at his instance his lincensed gun, Ext.-1 was recovered, the same day at 2:00 p.m. form the caves of Kali Udiyar where it was kept concealed under the big stones. Memo Ext. Ka-5 was then prepared and it is proved by the evidence of these witnesses. There is absolutely nothing substantial in their cross-examination, which may in any way be taken to discredit the evidence of the witnesses and in the totality of the circumstances of the case the evidence proved the factum of arrest and recovery of the gun at the instance of the appellant on 30.07.1999.

To discredit the claim of the prosecution learned counsel for the appellant drew attention to paper No. 58A on the record and which is a question-answer query by the court concerned. The query was made on behalf of the accused-appellant on 05.02.2001 from the record of the Court of Sessions Judge, Pithoragarh. Query was reported in the positive and it was not the effect that on 29.07.1999 police P.S. Jhoolaghat, District Pithoragarh moved an application for seeking police remand of the accused of the crime, the appellant Deewan Singh. Pointing out to this it was submitted that if the appellant was available in custody of the concerned Court on

29.07.1999, the question of his arrest by the Investigating Officer on 30.07.1999 does not arise. Explanation about this has been given in the evidence of the Investigating Officer. He gave out that although the accused-appellant had given an application fro surrender but he had not surrendered himself in the court on 29.07.1999. It appears that since the surrender application had been submitted the police P.S. Jhoolaghat had filed an application for police remand of the appellant and in the totality of the circumstances of the case the above question-answer query fail to make any dent in the prosecution version, about the appellant's absconding. In other words the evidence of the prosecution has not been assailed and the conduct of the appellant that he was absconding soon after the incident is a strong circumstances of his culpability. More so, when even recovery of gun, the weapon of assault was affected at his instance after 21 days of the incident on 30.07.1999, the day of his arrest.

The last mentioned circumstance regarding the explanation is as to how and in what circumstances the victim suffered the death has significant relevance in view of the settled legal principle that false explanation or false plea can be an additional link when prosecution stands on circumstantial evidence. The decision of The Apex Court need to be referred is reported in AIR 1984 Supreme Court 1622; Sharad Birdhi Chand Sarda Vs. State of Maharashtra.

The consideration of the circumstances takes us to the medical evidence of the case. At the very outset it may be stated that the submission of the learned defence counsel that the medical evidence in the case support the defence version that the death of Smt. Ganga Devi deceased was accidental is, not at all acceptable. The reason is that the situation and character of the wound; the number, direction and extent of the wounds as well as the topography of the place of incident and the surroundings of wounded person (the deceased) give an indication that the death was homicidal. Firearm wounds referred as ante mortem injuries No. 1,2 and 3 in the postmortem report on account of their situation and character clearly appear to have been sustained when the shot from the gun was fired

by taking the aim on the victim. The state of the injuries and their character rule out the possibility of sustaining these in a forward bending posture snatch or take away the gun from the possession of any child of very young age having a very short height. Ext.Ka-3, copy of the petition U/s 125 Cr.P.C. has description of the three children of the deceased. They were aged 6, 4 and 2 years and among these three the eldest may not even have height of about 3 feet. If any of the child was fondling with the gun, it was not probable that such a small child would have been able to pick-up the gun pointing its barrel upwards and in a situation like this if the deceased was to seize the weapon from the child and the same being loaded were to went off in the process the shot would have gone parallel to the ground instead of going upwards hitting the chest of the deceased. Further, the situation of the dead body as shown in the inquest report, Ext.Ka-1, was such that the deceased must have received the fire arm shot on her chest while standing on the ground and not on any of the stairs of the stair-case. The situation of the dead body also reveal that the chin of the deceased was resting on the third stair which give an indication that the deceased fell on the stairs after receiving the fire arm shot on her chest and by virtue of the situation and character of the wound the only inference which could be drawn is that the shot was fired at her by someone aiming the gun straight on her chest.

Further, direction and extent of the fire arm injury on the chest, as stated above, was neither downwards nor upwards and this aspect of the matter also lent credence to the inference that the deceased was fired at by aiming the gun straight on her chest. This also rule out the possibility of sustaining the fire-arm injury as a result of accident, alleged by the appellant.

Besides the firearm injury, bleeding wound, abrasions and contusions were also found on the nose, knees and inner aspect of the thighs. These type of injuries could have been sustained if the deceased would have rolled down the stairs after receiving the fire arm injury. This is not a case here in view of the topography of the place of occurrence as also shown in the above mentioned inquest

report, and also in view of the fact that the chin of the deceased was resting on the third stair clearly indicating that she received fire arm injury while standing on the ground and she thereafter fell on the stairs. In other words the above peculiar characteristics borne out of the medical evidence and the topography of the place of incident also indicate that the fatal fire arm injury was not sustained accidentally by the deceased. In short, the defence taken by the appellant was palpably false. The false explanation put forward by the appellant was, therefore, an additional link in the chain of the circumstances establishing connectivity between the appellant and the crime. All the circumstances taken together namely, the deceased was lastly alive in the company of the appellant; the deceased was subjected to ill-treatment and appellant had evil-eye on her and her resistance gave the appellant cause to give threats to her life; the appellant was absconding soon after the incident and could be arrested after 21 days when his gun, the weapon of assault, was also recovered at his instance coupled with the fact that the explanation given by the appellant and defence taken proved to be palpably false make a complete chain of circumstances wherefrom no inference other than guilt of the appellant can be drawn. In other words, the said circumstances are sufficient to fasten the liability of murder of the deceased on the appellant Deewan Singh.

Learned counsel for the appellant lastly argued that the case is covered by fourth exception of sec. 200 IPC as the intention to cause death of the deceased has not been proved. The submission of the learned Counsel has no substance as the fire-arm injury was caused on the chest of the deceased, the vital part of the body. It has been held by the Apex Court in the case of Dhupa Chamar Vs. State of Bihar; 2002 AIR SCW 3217 that even if a solitary injury is inflicted intentionally and if the same was sufficient to cause death in ordinary course of nature, the accused can be convicted of the murder. In the instant case, there is evidence of the Medical Officer that the fire arm injury sustained by the deceased was sufficient in the ordinary of course nature to death, therefore, the charge of murder

was established against the appellant and he was rightly convicted U/s 302 IPC by the learned Sessions Judge.

For the forgoing reason we find no substance and merit in the appeal and the same is hereby dismissed. The conviction and sentence to life imprisonment awarded against him is confirmed. The appellant is in jail and he shall serve out the sentence imposed by the Sessions Judge.

Let the record of the trial be sent back to the Court concerned for compliance of the order.

(Irshad Hussain) **(P.C. Verma A.C.J.)**

July 16,2003:

NCM